

## Rye City Planning Commission Minutes

October 12, 2004

**PRESENT:**

Barbara Cummings  
Martha Monserrate  
G. Patrick McGunagle  
Hugh Greechan

**ABSENT:**

H. Gerry Seitz  
Peter Larr  
Nick Everett

**ALSO PRESENT:**

Christian K. Miller, AICP, City Planner

**I. HEARINGS**

**1. Beechwind Properties (Continued)**

The Commission stated that it received the unsigned findings and decisions of the City Board of Appeals.

The Planning Commission questioned the date of the plan referenced in the Board of Appeals decision and the proposed removal of vegetation within the view corridor. Rex Gedney (applicant's architect) stated that he had not seen the Board of Appeals decision but that they requested at their September meeting that the plant material within the view corridor be removed. It was his understanding that the Board of Appeals did not prohibit plant material but did not want it shown on the site plan.

The Planning Commission agreed that it would keep the hearing open until it received the official decision of the Board of Appeals.

There was no public comment

On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the following vote:

AYES: Barbara Cummings, Peter Larr, Martha Monserrate, Hugh Greechan

NAYS: None

RECUSED: None

ABSENT: Patrick McGunagle, Gerry Seitz, Nick Everett

the Planning Commission took the following action:

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1 ACTION: The Planning Commission kept open the public hearing on final  
2 subdivision application number SUB283 and wetland permit application  
3 number WP116.  
4

### **2. Commerce Bank**

5  
6  
7 Chair Cummings read the public notice.  
8

9 The City Planner indicated that the applicant had submitted an affidavit testifying to its  
10 compliance with the City's notification requirements.  
11

12 Craig Tompkins (applicant's engineer) provided an overview of the application noting  
13 that it involved the conversion of a dry cleaners to a one-story bank building. Mr.  
14 Tompkins stated that the site plan had been revised in response to comments  
15 requested by the Rye City Planning Commission and Board of Architectural Review.  
16

17 Mr. Tompkins stated that the project involved complete renovation of the existing  
18 building and that 85% of the existing footprint will remain the same. Mr. Tompkins  
19 stated that the plan had been revised to increase the front yard setback of the building  
20 to provide for a larger sidewalk along Purchase and Smith Street. Mr. Tompkins stated  
21 that approximately 400 square feet of sidewalk area would be added along the building  
22 frontage. New sidewalks would be provided or a fee in lieu would be provided for those  
23 improvements along Smith Street, which are programmed by the City as part of a City  
24 sponsored capital project.  
25

26 Mr. Tompkins stated that the proposed stairway in the rear of the building has been  
27 relocated so that it does not encroach into an existing right of way.  
28

29 In response to the Commission's request, Mr. Tompkins stated that a recent  
30 environmental assessment report for the property indicated the presence of some  
31 contaminants that exceed New York State Department of Environmental Conservation  
32 levels. Mr. Tompkins stated that it was previously represented at a Planning  
33 Commission meeting by the property owner, Mr. Kim, that there were no subsurface  
34 issues. Mr. Tompkins stated that at that time Mr. Kim's representation was accurate  
35 based on the findings of the July 13, 2001 report. Mr. Tompkins stated, however, that a  
36 new report was completed by Commerce Bank dated October 8, 2004, which indicated  
37 the presence of subsurface, contamination.  
38

39 Jack Geoghegan (Attorney) stated that he was representing the abutting property  
40 owner Rosaline O'Neil, at 32-36 Purchase Street. Mr. Geoghegan stated concern with  
41 the proposed architectural and façade treatment, but recognized that those are under  
42 the jurisdiction of the City's Board of Architectural Review.  
43

44 Mr. Geoghegan stated that he provided the City Planner the copy of the deed and  
45 survey, which shows the 15-foot right of way extending across the rear of the

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1 applicant's property. Mr. Geoghegan stated that he was pleased to see that the  
2 applicant revised its plans to eliminate the stairway, which encroached into this right of  
3 way.  
4

5 Mr. Geoghegan stated that he understands that the proposed building is one story but  
6 that the parapet wall as well as the proposed glass pyramid on the corner of the roof  
7 may have adverse light and air impacts on his client's abutting property. Mr.  
8 Geoghegan stated he recognized the applicant's rights under zoning to increase the  
9 height of the building from one to three stories but stated that his client's adverse  
10 impact to light and air should be respected.  
11

12 Mr. Geoghegan stated that his client had concerns with the construction process and  
13 potential for rodents to be disturbed and enter his client's adjacent property. He  
14 requested that the City require the applicant to address potential rodent infestation  
15 issues.  
16

17 The Planning Commission questioned the applicant's intention with respect to the  
18 environmental conditions found on the site. Mr. Tompkins indicated that the applicant is  
19 still reviewing the information but that the responsibility for cleanup would be the  
20 property owner's and not Commerce Bank, which is seeking a long-term lease on the  
21 property.  
22

23 The Commission agreed that it would keep the public hearing open given new  
24 information regarding the presence of sub surface contaminant.  
25

26 On a motion made by Martha Monserrate, seconded by Peter Larr and carried by the  
27 following vote:  
28

29 AYES: Barbara Cummings, Peter Larr, Martha Monserrate, Hugh Greechan

30 NAYS: None

31 RECUSED: None

32 ABSENT: Patrick McGunagle, Gerry Seitz, Nick Everett  
33

34 the Planning Commission took the following action:  
35

36 ACTION: The Planning Commission kept open the public hearing on site plan  
37 application number SP284.  
38  
39

### **3. Rye Town Dock (Continued)**

40  
41  
42 The Planning Commission discussed and agreed that no member needed to be  
43 recused from the discussion of this matter solely based on their membership in either  
44 the American Yacht Club or Shenorock Shore Club.  
45

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1 Ed Beane (attorney) stated that he represented the Friends of the Rye Town Dock and  
2 Shenorock Shore Club regarding a request to eliminate the previously approved lights  
3 along the dock. Mr. Beane stated that two members of the Rye Town Board were also  
4 present to speak in support of the application. Mr. Beane stated that the previously  
5 approved lights did not appear necessary given the current restriction on the dock that  
6 prohibits nighttime use and the level of ambient light in the area. Mr. Beane stated that  
7 the lights were never intended to be part of the applicant's plan, but as an alternative  
8 that inadvertently made it onto the approved drawings.  
9

10 The Town of Rye Deputy Supervisor stated she was representing the Rye Town Board.  
11 She indicated that the Town of Rye agrees that the lights should not be provided and  
12 that providing the lights could attract young people to the dock after hours, presenting  
13 potential liability and safety concerns.  
14

15 Doug Carey (Rye Resident) stated he was a member of the Save the Rye Town Dock  
16 Association and that he felt the lights should be provided. He stated that the lights are  
17 needed since the current restriction allows the dock to be used one hour before sunrise  
18 and one hour after sunset. Lights, in his opinion, are needed for safety reasons. Mr.  
19 Carey added that the existing streetlight and light on the AYC guardhouse does not  
20 provide adequate lighting for the area.  
21

22 Andy Ball (Rye Resident) stated he was a member of the Save the Rye Town Dock  
23 Association. He stated he was grateful to Shenorock Shore Club in enhancing the  
24 dock, but added that the lights should be provided. He stated that the architectural firm  
25 retained by Shenorock noted in an April 12, 2001 technical memorandum that  
26 increased lighting would improve safety and enforcement of the area. Mr. Ball stated  
27 that it was his opinion that the lights would not create a safety hazard but improve  
28 safety.  
29

30 The Commission questioned whether lights would be needed on the dock for nautical  
31 navigation purposes. The Commission concluded that the dock's separation from the  
32 channel probably means that lights are not required for that purpose.  
33

34 On a motion made by Peter Larr, seconded by Hugh Greechan and carried by the  
35 following vote:  
36

37 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Hugh Greechan

38 NAYS: None

39 RECUSED: None

40 ABSENT: Patrick McGunagle, Gerry Seitz, Nick Everett  
41

42 the Planning Commission took the following action:  
43

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1 ACTION: The Planning Commission closed the public hearing on wetland permit  
2 application number WP116.  
3  
4

### **4. 75 Theodore Fremd**

5  
6  
7 Chair Cummings read the public notice.  
8

9 The City Planner indicated that the applicant had submitted an affidavit testifying to its  
10 compliance with the City's notification requirement.  
11

12 Jonathan Kraut (applicant's attorney) stated that the applicant, Altheus Inc., intended to  
13 use the former Boston Chicken building as a retail bike store. The property is located in  
14 a B-1 District and the applicant does not intend to make any exterior changes to the  
15 site. Mr. Kraut stated that the need for the Planning Commission's review is that there  
16 are conditions as part of two prior Planning Commission resolutions (Nos. 11-91 and 6-  
17 92) that limit the hours of operation on the site. Mr. Kraut stated that these conditions  
18 limit the hours of operation from 11AM to 10PM and were probably established to  
19 address potential traffic impact associated with the previously approved use. Mr. Kraut  
20 stated that the application would likely not stay open past 10PM, but needed relief from  
21 the current 11AM restriction.  
22

23 Trisha Augusta (Mead Place Resident) stated that she was not opposed to the  
24 proposed retail use, but want to preserve restrictions that may allow the use to return to  
25 a food-based or restaurant operation. Mr. Kraut responded that the applicant would  
26 consider an appropriate restriction to prevent such change of use.  
27

28 On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the  
29 following vote:  
30

31 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Hugh Greechan

32 NAYS: None

33 RECUSED: None

34 ABSENT: Patrick McGunagle, Gerry Seitz, Nick Everett  
35

36 the Planning Commission took the following action:  
37

38 ACTION: The Planning Commission closed the public hearing on the modified site  
39 plan application.  
40

### **5. Rye Community Synagogue**

41  
42  
43 Chair Cummings read the public notice.  
44

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1 The City Planner indicated that the applicant had submitted an affidavit testifying to its  
2 compliance with the City's notification requirements.

3  
4 Jonathan Kraut (applicant's attorney) stated that the application involved a modification  
5 to the previously approved site plan related to the expansion of the Rye Community  
6 Synagogue. Mr. Kraut began by stating that by the location of the garage storage shed  
7 along the northern property line was in error on the site plan. Mr. Kraut stated that the  
8 applicant has not determined the final location of the garage storage shed but that it  
9 would not be in that location.

10  
11 Mr. Kraut continued his presentation providing an overview of the proposed project,  
12 which involves the following modifications to the previously approved site plan:

- 13  
14 1. Eliminate the previously approved caretakers residence.
- 15  
16 2. Remove vegetation to expand the play area in the rear of the site and within a  
17 portion of the 100-foot wetland buffer.
- 18  
19 3. Add a 30-foot by 40-foot terrace within the 100-foot buffer. To avoid a wetland  
20 permit issues, Mr. Kraut stated that the applicant will be constructing the deck  
21 out of wood.
- 22  
23 4. Add a 25-foot by 30-foot storage shed approximately 12-feet in height on the  
24 west side of the building. Mr. Kraut stated that the location of this structure  
25 would be obscured by existing vegetation from abutting properties.
- 26  
27 5. Add 12 overflow parking spaces. Mr. Kraut stated that these spaces would  
28 consist of a grasscrete or other material and would only be used as overflow  
29 during peak holiday periods. Mr. Kraut added that this area is in formerly used  
30 today as overflow parking.

31  
32 Mr. Kraut stated that as a religious use the Synagogue is entitled to a presumption of  
33 approval.

34  
35 Barbara Brunner (244 Forest Avenue resident) stated that she was a 30-year resident  
36 and that she was concerned regarding the lighting of the building at night. She noted  
37 that the site lighting is acceptable but that the building lighting should be turned off in  
38 the evening hours when not in use.

39  
40 Ms. Brunner stated that she is concerned about the expanded parking and that the  
41 evergreen plantings be provided to screen the parking area and preserve the residential  
42 character of the neighborhood.

43  
44 Siegfried Brunner (244 Forest Avenue resident) stated that more information should be  
45 provided regarding the potential loss of trees and vegetation where the proposed

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1 expanded parking is to be provided. Mr. Brunner stated that the existing vegetation  
2 provides both a vegetated screen and a noise barrier.

3  
4 Mr. Kraut responded that it is not the applicant's intent to keep the building lit in the  
5 evening hours except for limited security lighting. Mr. Kraut stated that the lighting in  
6 the building was kept on due to timer defects in two classrooms, which are being  
7 corrected.

8  
9 Mr. Kraut further responded that the removal of vegetation is a permitted activity under  
10 the City Code and does not require any approval.

11  
12 Ann Murphy (Ann Lane resident) stated that she objected to the location of the garbage  
13 shed and she was happy to hear that it was going to be relocated.

14  
15 Ms. Murphy stated that the previously approved stairway was eliminated and that the  
16 building appears to be closer to the property line than as shown on the approved plans.  
17 Ms. Murphy stated that this loss of set back to the property line has limited the amount  
18 of area available to provide the required buffer screen.

19  
20 Mr. Kraut responded that he would look into the set back issue but stated that the  
21 required landscape buffer would be provided as shown on the approved plan. Mr. Kraut  
22 stated that a retaining wall is being constructed for the purpose of accommodating the  
23 required screen.

24  
25 The Planning Commission stated that it was reviewing the proposed application and  
26 that potential compliance issues with the approved site plan should be reviewed with  
27 the City Building Department.

28  
29 Anne O'Connell (Ann Lane resident) stated that she was happy to hear the removal of  
30 the previously proposed caretaker's residence but stated that providing adequate  
31 screening is an important consideration. Ms O'Connell also complained about the  
32 extent of the nighttime lighting at the site.

33  
34  
35 A resident of 15 Ann Lane resident stated concern with the location of the garbage  
36 storage shed.

37  
38 On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the  
39 following vote:

40  
41 AYES: Barbara Cummings, Peter Larr, Martha Monserrate, Hugh Greechan

42 NAYS: None

43 RECUSED: None

44 ABSENT: Patrick McGunagle, Gerry Seitz, Nick Everett

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the Planning Commission took the following action:

**ACTION:** The Planning Commission closed the public hearing on modified site plan application number SP146B.

### **II. ITEMS PENDING ACTION**

#### **1. Beechwind Properties**

Planning Commission stated that it would require the applicant to submit a final subdivision plat prior to considering a resolution of approval. The Commission stated that the applicant had not provided that plat and further requested that all site plans be consistent with the recent approval by the Board of Appeals. The Planning Commission noted some potential inconsistencies in the Board of Appeals variance and the approved drawings such as the size of the proposed residences indicated in the findings and decisions and those shown on the site plan. The Planning Commission requested that the City Planner work with the Chairman of the Board of Appeals to clarify or correct any errors or inconsistencies between the applicant's drawings and the approved variances.

The Commission discussed the apparent restriction prohibiting of plantings within the 35-foot view corridor. The Commission noted that the planting of this material is required to pursuant to the Commission's wetland mitigation requirements. Neil DeLuca (applicant's representative) stated that the applicant desired providing the plantings but did not interpret the Board of Appeals action as prohibiting plantings. The City Planner noted that based on the proposed plant material and proposed grading that the height restrictions indicated in the Board of Appeals decision could be met. The City Planner added, however, that enforcing the height restriction would be challenging for City staff. The Planning Commission noted that the applicant should be required to provide the benchmark in the front yard, which served as the basis for height restrictions within the view corridor.

The Planning Commission requested that markers be provided in the field or on the site to delineate the edge of the view corridor.

The Planning Commission requested that the plans be revised to eliminate the extent of driveway encroachment into the view corridor to be consistent with the Board of Appeals decision. Rex Gedney stated that the plans would be revised accordingly.

The Planning Commission discussed requiring a deed restriction on proposed lot 1 indicating its proximity to the adjacent and permitted waterfront business. The intent of the deed restriction would be to notify future residential property owners of the adjacent business is permitted by the Rye City Zoning Code. The Planning Commission agreed that such a restriction would not be necessary.



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1 The Planning Commission agreed to continue this matter upon the applicant's  
2 submission of revised plans and the submission the final findings and decisions from  
3 the Board of Appeals.

### **2. Commerce Bank**

4  
5  
6  
7 The Planning Commission was joined by the Board of Architectural Review, which had  
8 requested modifications in the building façade that impacted the site plan. Gene  
9 McGuire (BAR chairman) stated that the BAR favored the applicant's most recent  
10 revision since it was more consistent with the character of the streetscape and that it  
11 better defined the intersection of Purchase Street and Smith Street. BAR noted that the  
12 revised plan prevented the door swinging into public space.

13  
14 The City Planner noted that the revised plan did not expand as much of the adjacent  
15 public sidewalk as the previously proposed but that it was a good balance between  
16 meeting the BAR's aesthetic concerns and the functional considerations of providing  
17 additional area to improve pedestrian circulation.

18  
19 The Planning Commission reached consensus based on the comments of the BAR that  
20 the revised site plan was acceptable. The Commission noted it would consider a  
21 resolution of approval at its next meeting.

### **3. Rye Town Dock**

22  
23  
24  
25  
26  
27 The Planning Commission debated whether providing the approved dock light would  
28 create a security concern or safety enhancement. Members noted that prior reports  
29 discussed the need for the lighting to improve safety and security. Other members  
30 stated that lighting at the dock creates opportunities for the dock to be used in the  
31 prohibited hours and become an attractive nuisance.

32  
33 The City Planner stated that in April 2003 the Planning Commission considered a  
34 variety of modifications to the previously approved plan one of which included modifying  
35 the approved dock light. The Commission at that time did approve the applicant's  
36 request to modify the previously approved lights.

37  
38 The Planning Commission agreed that it would like a report from the Rye City Police  
39 Commissioner regarding his opinion as to the appropriateness of the applicant's  
40 request to eliminate the previously approved dock lights. The Commission also  
41 requested that the Commissioner provide information as to whether there has been an  
42 increase in complaints or activity in nighttime hours at the dock since its recent  
43 completion.

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1 The Planning Commission discussed whether existing area lighting could be redirected  
2 to improve lighting at the dock. Doug Carey stated that lighting in the area is too far  
3 away to adequately light the end of the dock.  
4

5 The Planning Commission stated that there would be no action until it received the  
6 report of the Rye City Police Commissioner and encouraged the applicant to consider  
7 alternative lighting plans that meets its need.  
8  
9

### **4. 75 Theodore Fremd Avenue**

10  
11  
12 The Planning Commission discussed the elimination of the restriction relative to  
13 prohibiting the serving of food on the premises. The City Planner noted that the  
14 proposed business is permitted in the B-1 district and that it was the only property within  
15 the immediate area to have a restriction. Planning Commission acknowledged the City  
16 Planner's comment but stated that the restriction to prohibit the serving of food was  
17 reasonable and agreed to by the applicant. The Planning Commission agreed that it  
18 would eliminate the time restriction on the property but that the property should not be  
19 permitted to be used for the serving of prepared foods.  
20

21 Mr. Kraut responded that the Commission sounded reasonable but that prohibiting of  
22 sales of all food may be problematic in the event that the applicant desires to sell  
23 prepackaged or prepared foods such as those typical of a fitness store. The  
24 Commission agreed that such a restructure would be appropriate.  
25  
26

27 On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the  
28 following vote:  
29

30 AYES: Barbara Cummings, Peter Larr, Martha Monserrate, Hugh Greechan

31 NAYS: None

32 RECUSED: None

33 ABSENT: Patrick McGunagle, Gerry Seitz, Nick Everett  
34

35 the Planning Commission took the following action:  
36

37 ACTION: The Planning Commission adopted a resolution conditionally approving  
38 the modified final site plan application.  
39

### **5. Rye Community Synagogue**

40  
41  
42 The Planning Commission discussed the proposed parking expansion and inquired as  
43 to the extent of existing vegetation in the area. The Commission requested that the  
44 applicant provide more information regarding whether existing vegetation would need to  
45 be removed and the extent of evergreen screen that is provided in the area. Mr. Kraut

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1 responded that the applicant would provide more information for the Commission's  
2 review but we reiterated that the area is currently used today on an informal basis for  
3 overflow parking.

4  
5 Mr. Kraut stated that the site plans would be revised to convert the previously proposed  
6 blue stone terrace to a deck to avoid providing landscape wetland plantings.

7  
8 The Planning Commission requested that the applicant consider an alternative material  
9 for the overflow parking area in lieu of the proposed grasscrete.

10  
11 The Planning Commission inquired as to whether the approved subsurface drainage  
12 measures have been installed as shown on the approved plan. Floyd Kaplan  
13 (Synagogue member) overseeing construction stated that the storm water facilities had  
14 been provided and approved by the City Engineer.

15  
16 The Planning Commission agreed that it would wait for further information before  
17 considering a decision on the application.

### **6. Lombardi & Sinis Subdivision**

18  
19  
20  
21  
22 The Planning Commission requested that the applicant provide more information  
23 regarding the sight distance provided by the proposed driveway and its compliance with  
24 distance criteria. The Planning Commission reiterated its concerns regarding the need  
25 to provide a safe access to the property from Boston Post Road, which is a heavily  
26 traveled roadway. The Planning Commission requested that the applicant show the  
27 optimal location on the property's frontage with Boston Post Road for achieving  
28 maximum sight distance. The Commission wants to provide the safest access point as  
29 practical given other planning considerations.

30  
31 The Planning Commission requested that the driveway width for the proposed common  
32 driveway on Boston Post Road be reduced to 25 feet.

33  
34 The Planning Commission requested that the applicant provide more information  
35 regarding the proposed drainage system for each lot. The Commission requested that  
36 the applicant provide results of percolation test results to determine that the soil is  
37 suitable for the proposed dry wells on the property.

38  
39 The Planning Commission requested that the applicant continue to explore the plan  
40 modifications in the proposed subdivision to preserve and enhance the character of the  
41 Boston Post Road in this location. The Commission reiterated its concern regarding the  
42 impact of the subdivision on the Boston Post Road, which is designated as a historic  
43 district.